



European Securities and  
Markets Authority

## Response form for the Consultation Paper on EU Growth prospectus



## Responding to this paper

ESMA invites responses to the questions set out throughout this Consultation Paper. Responses are most helpful if they:

1. respond to the question stated;
2. contain a clear rationale; and
3. describe any alternatives ESMA should consider.

ESMA will consider all responses received by 28 September 2017.

## Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

4. Insert your responses to the questions in the Consultation Paper in the form “Response form\_Consultation Paper on EU Growth prospectus”, available on ESMA’s website alongside the present Consultation Paper ([www.esma.europa.eu](http://www.esma.europa.eu) → ‘Your input – Open consultations’ → ‘Consultation on technical advice under the new Prospectus Regulation’).
5. Please do not remove tags of the type <ESMA\_QUESTION\_EUG\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
6. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
7. When you have drafted your response, name your response form according to the following convention: ESMA\_EUG\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_EUG\_ABCD\_RESPONSEFORM.
8. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input – Open consultations’ → ‘Consultation on technical advice under the new Prospectus Regulation’).

## Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly indicate by ticking the appropriate checkbox on the website submission page if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confi-



dential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

### **Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Data protection'.

### **Who should read this Consultation Paper**

This Consultation Paper may be of particular interest to investors, issuers, including issuers already admitted to trading on a regulated market or on a multilateral trading facility, offerors or persons asking for admission to trading on a regulated market as well as to any market participant who is affected by the new Prospectus Regulation.



## General information about respondent

Name of the company / organisation	Federation of European Securities Exchanges (FESE)
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Europe

## Introduction

***Please make your introductory comments below, if any:***

<ESMA\_COMMENT\_EUG\_1>

FESE fully supports the European Commission's Capital Markets Union (CMU) project, and its goal to strengthen the European economy and ensure easier access to markets for all companies, including growth companies which are the backbone and engine of the economy. The revision of the prospectus rules is a first step to reduce costs and burdens for companies whilst improving their access to funding, increasing information and financing choices for investors, and delivering more efficient European capital markets overall. The Level II measures will, in this respect, play a key role in shaping the final prospectus rules, hopefully ensuring a major relief for companies looking for funding on capital markets while making disclosed information more useful for investors. In order for this review to have the intended effect, it is crucial that the regulatory framework allows producing prospectuses that are as accessible and digestible as possible for the investor. If the prospectus is too long and difficult to read, understand and analyse, it will simply not be a useful document.

We especially welcome the proposals for a simplified EU Growth Prospectus which we believe has the potential to offer small and mid-caps a true alternative to the current rules, provided its content is well calibrated. In this regard, we would like to ask for a clarification on who will be eligible for the EU Growth Prospectus. We believe there is a clear intent at Level I to include small and mid-sized companies with less than €200m market capitalisation, in addition to SMEs defined according to turnover, number of employees, etc. However, the €200m figure and the 'functional' definition of an SME may not correspond. For public offers by SMEs immediately followed by an admission to trading on an MTF or SME Growth Market, we believe it should be possible to consider tentative market capitalisation and, when it is below €200m, allow companies to take advantage of the EU Growth Prospectus even though they might not fit the 'functional' definition of an SME.

When considering the content of the Growth Prospectus, it is useful to remember that the market operator may always consider adding requirements for issuers as part of the listing rules for a market. Although many requirements are naturally and still should be harmonised across the EU, there may well be practices which have developed in a local ecosystem and which motivate certain requirements. Especially smaller companies in earlier stages of growth are more dependent on local investors for financing, and thus the room for local adaptation of rules becomes especially important.

We would encourage ESMA to consider specific regimes currently adopted by the existing markets for growth companies, for example in the case of the approval procedures, and to reuse their features as much as possible. In certain jurisdictions, for example, the admission document can be vetted by the exchange itself (under the supervision of the local NCA) in case of admissions to trading (it is the case of Euronext Growth markets), or of public offers prospectuses below certain amounts (Greece). Furthermore, in the case of Nasdaq's First North a practice of "Company Description" has proved to work consistently. They are appropriately short, concise and informative documents, not too costly for the issuer to produce and relatively easily to understand for investors.

The requirements for the Company Description are included in the First North listing rules and Nasdaq may – and indeed does – require additional information when appropriate. One feature in this system is that the issuers are supported by a so called Certified Adviser when producing the Company Description.



The document is approved by the market operator in accordance with well organised procedures, including managing of internal conflicts of interests. The National Competent Authority is not involved in the direct approval of each such Company Description, but supervises the procedure indirectly in its normal supervision of Nasdaq as a market operator.

Furthermore, given that companies admitted to trading on Regulated Markets or MTFs already produce a great deal of information that is available publicly, we emphasise the need to also alleviate as much as possible the regime for secondary offers.

Lastly, in its 2016 communication on “Capital Markets Union – Accelerating reform”, the European Commission announced that it would establish a High-Level Expert Group on Sustainable Finance (HLEG) to advise on developing a comprehensive EU strategy on sustainable finance. The HLEG was established on 22 December 2016 and issued its Interim Report last 13 July. The Interim Report maps out the challenges and opportunities that the European Union (EU) faces in developing a sustainable finance policy agenda, identifying possible areas of reform in financial policy. It also presents a first set of early recommendations to the Commission. The HLEG will further explore other policy areas to provide further recommendations in the final report, due at the end of 2017/beginning of 2018. SMEs Growth Markets Level II Prospectus implementing legal framework should look closely to the work and upcoming final recommendations of the HLEG in order to drive forward efforts to holistic and consistently reorient the financial system so that it can support long-term, sustainable growth. We strongly believe that the financial sector has a key role in reaching the climate change goals of the Paris Agreement and the EU's 2030 Agenda for sustainable development and that it is also key having more private capital, including through SMEs/SMEs Growth Markets, mobilised towards green and sustainable investment so as to enable the transition to a low-carbon economy.<ESMA\_COMMENT\_ EUG\_1>



- 1. : Do you consider that specific sections should be inserted or removed from the registration document and / or the securities note of the EU Growth prospectus proposed in Article A? If so, please identify them and explain your reasoning, especially in terms of the costs and benefits implied.**

<ESMA\_QUESTION\_EUG\_1>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_EUG\_1>

- 2. : Do you agree with the proposal to allow issuers to define the order of the information items within each section? Please elaborate on your response and provide examples. Can you please provide input on the potential trade-off between benefits for issuers coming from increased flexibility as opposed to further comparability for investors coming from increased standardisation?**

<ESMA\_QUESTION\_EUG\_2>

We recommend retaining flexibility in the order in which information is disclosed (e.g. it should be possible to describe the company's activities before detailing risk factors). This would allow companies to better highlight to investors their distinct characteristics and features. Flexibility is also key to avoid duplication of information and make prospectuses more comprehensible.

Flexibility takes on even more importance in the case of SMEs since they do not have as many resources to spend on disclosing information as large companies.

We suggest making it clear in Level II that the disclosure requirements are minimum requirements and that issuers are free to include additional information if they deem it necessary.<ESMA\_QUESTION\_EUG\_2>

- 3. : Given the location of risk factors in Annexes IV and V of the Prospectus Regulation, do you consider that this information is appropriately placed in the EU growth prospectus? If not please explain and provide alternative suggestions.**

<ESMA\_QUESTION\_EUG\_3>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_EUG\_3>

- 4. : Do you agree with the proposal that the cover note to the EU Growth prospectus should be limited to 3 pages? If not, please specify which would be an appropriate length limit for the cover note? Could you please explain your reasoning, especially in terms of the costs and benefits implied?**

<ESMA\_QUESTION\_EUG\_4>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_EUG\_4>

5. : **Do you agree that the presentation of the disclosure items in para 81 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the disclosure items.**

<ESMA\_QUESTION\_EUG\_5>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_EUG\_5>

6. : **Do you agree with the proposal to introduce a single registration document that is applicable in the case of equity and non-equity issuances? If not please provide your reasoning and alternative approach.**

<ESMA\_QUESTION\_EUG\_6>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_EUG\_6>

7. : **Do you agree with the requirement to include in the EU Growth prospectus any published profit forecasts in the case of both equity and non-equity issuances without an obligation for a report by independent accountants or auditors? If not please elaborate on your reasoning. Please also provide an estimate of the additional costs involved in including a report by independent accountants or auditors.**

<ESMA\_QUESTION\_EUG\_7>

Unaudited outstanding profit forecasts should not be included in the prospectus, regardless of the asset class. This is because forecasts are akin to a business plan and could be misinterpreted or could mislead investors in case they are not audited.

In addition, the inclusion of unaudited profit forecasts could reflect badly on investor trust and could over time damage financing opportunities for all SMEs, as growth segments would suffer from a less robust reputation than the rest of the market.

In order to protect issuers and ensure investors can trust the information present in the prospectus, we believe profit forecasts should not be included in the EU Growth Prospectus. If they were to be included, they should be audited. This would not prevent issuers from communicating to potential investors profit objectives or guidance.

<ESMA\_QUESTION\_EUG\_7>

8. : **Do you consider that the requirement to provide information on the issuer's borrowing requirements and funding structure under disclosure item 2.1.1 of the EU Growth registration document should be provided by non-equity issuers too? If yes, please elaborate on your reasoning.**

<ESMA\_QUESTION\_EUG\_8>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_EUG\_8>

- 9. : Do you think that the information required in relation to major shareholders is fit for purpose? In case you identify specific information items that should be included or removed please list them and provide examples,. Please also provide an estimate of elaborating on the materiality of the cost to provide such information items.**

<ESMA\_QUESTION\_EUG\_9>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_EUG\_9>

- 10. : Do you agree that issuers should be able to include in the EU Growth prospectus financial statements which are prepared under national accounting standards? If not please state your reasoning. Please also provide an estimate of the additional costs involved in preparing financial statements under IFRS.**

<ESMA\_QUESTION\_EUG\_10>

We agree, the requirement to provide 2 years of financial statements for equities / 1 year for non-equities under national accounting standards or IFRS is consistent with the rules some of FESE members have in place for their SMR and mid-cap dedicated markets, e.g. Euronext Growth.

The most important element regarding accounting standards on growth segments is to leave issuers the choice of preparing financial statements under the local GAAP or under IFRS depending on their size, strategy, and the type of investors they are trying to reach.

While a local business may not need to reach foreign investors at first and will be better served by the local GAAP, another company with an international vision might need to use IFRS to appeal to a broader pool of investors.

In addition, we agree with the proposal to incorporate audit reports by reference.

<ESMA\_QUESTION\_EUG\_10>

- 11. : Do you consider that there are other additions or deletions that would improve the utility of the EU Growth registration document? If yes, please specify.**

<ESMA\_QUESTION\_EUG\_11>

In terms of the proportionate disclosure regime for SMEs, we strongly believe that it should be simple, standardised, short in length and less costly for small and mid-size companies to produce. Such prospectuses should focus on the key details of the issuer and the securities, using simple language and making use of incorporation by reference. In particular, we recommend explicitly encouraging and giving issuers greater flexibility on incorporation by reference as a means of avoiding duplicate disclosure of already public information and reducing administrative costs for companies. This applies, in particular, to prospectus disclosures going beyond core information used by investors while making an investment decision.

As recommended in Accountancy Europe's paper on simplified SME prospectuses ([here](#)), one option could be to allow for prioritising the information currently found in prospectuses in three tiers.

Thus, issuers should have the option of presenting the information based on three categories:

I. Core information that should be in the prospectus (e.g. description of the business model, key market features, business strategy, overview of performance, reasons for offering and use of proceeds).

II. Core information that is already made public on the company's website (e.g. audited historical financial statements, extended CVs and resumes of all management, or lock up data, type of shares, voting rights





and the likes). The relevance of this information to the prospectus should be outlined, and the information should be incorporated in the prospectus with appropriate links and references to the relevant place on the company's website.

III. Generic non-company specific information made public either on a third-party website or the issuer's website (e.g. known differences between a country's accounting framework and the International Financial Reporting Standards). The relevance of this information to the prospectus should be outlined, and the information should be incorporated in the prospectus with appropriate links and references to the relevant place on the website.

The information disclosed (in any of the three categories) would allow for an easier comparison among them for consumers.<ESMA\_QUESTION\_EUG\_11>

**12. : Do you consider that the disclosure items in the EU Growth registration document are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.**

<ESMA\_QUESTION\_EUG\_12>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_EUG\_12>

**13. : Please indicate if further reduction or simplification of the disclosure requirements of the EU Growth registration document could significantly impact on the cost of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.**

<ESMA\_QUESTION\_EUG\_13>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_EUG\_13>

**14. : Do you think that the presentation of the disclosure items in para 97 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the information items.**

<ESMA\_QUESTION\_EUG\_14>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_EUG\_14>

**15. : Do you agree with the proposal to introduce a single securities note that is applicable in the case of equity and non-equity issuances? If not please provide your reasoning and alternative approach.**

<ESMA\_QUESTION\_EUG\_15>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_EUG\_15>

**16. : Do you consider that the disclosure items in the EU Growth securities note are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.**

<ESMA\_QUESTION\_EUG\_16>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_EUG\_16>

**17. : Do you consider that there are any other additions or deletions that would improve the utility of the EU Growth securities note? If yes, please specify and provide examples. In addition, please consider whether the categorisation of disclosure items for non-equity securities is fit for purpose. If not, please specify and provide your suggestions.**

<ESMA\_QUESTION\_EUG\_17>

We would like to suggest making three additions to the securities note:

1. We believe that a requirement to disclose all subscription commitments should be added to the securities note under section 4.2.2.

This is because we do not believe the 5% threshold currently included in the drafting is particularly relevant. For instance, under the current proposal, 10 persons could subscribe for 4.5% of the offer each, subscribing collectively for nearly half of the offer, while the information would not be disclosed to investors.

2. We fully support the inclusion of a declarative estimate of the total expenses related to the issue/offer under section 4.6.6; however, we believe this section could be helpfully enhanced by requiring the disclosure of expenses in a more granular way. For instance, fees could be broken down into legal fees, communications fees, accounting fees, structuring and placement fees, and regulatory and exchange fees. This would not create additional burdens for issuers as all these fees would anyway need to be identified and added up to produce the aggregate estimate figure initially requested.

We believe presenting fees in a more granular fashion would encourage transparency and foster a better understanding of the repartition of IPO fees across all market participants involved. It would also give prospective listed companies a much better point of comparison to assess the multiple budget strands of an IPO, which will vary considerably depending on the type of company, especially when it comes to the communications budget.

3. Because a working capital statement is only required for midcaps on SME Growth Markets, we regret that a statement of capitalisation and indebtedness under section 2.2 is no longer required in the securities note for smaller companies.

The statement of capitalisation and indebtedness as of 90 days prior to the date of the prospectus provides important information to investors. The smaller the company, the more important for investors the disclosure of capitalisation and indebtedness becomes as smaller structures are more likely than larger ones to experience issues in this area. Currently, on certain markets issuers are required to provide information on capitalisation and indebtedness according to the exchange rules. We would therefore recommend extending to all companies the requirement to include disclosure on capitalisation and indebtedness in the securities note.

<ESMA\_QUESTION\_EUG\_17>



**18. : Please provide an estimate of the benefit in terms of reduced costs that the production of a single securities note implies.**

<ESMA\_QUESTION\_EUG\_18>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_EUG\_18>

**19. : Please indicate if further reduction or simplification of the disclosure requirements of the securities note of the EU Growth prospectus could significantly impact on the cost of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.**

<ESMA\_QUESTION\_EUG\_19>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_EUG\_19>

**20. : Do you think that the presentation of the disclosure items in para 112 is fit for purpose for SMEs? If not, please elaborate and provide your suggestions for alternative ways of presenting the information items.**

<ESMA\_QUESTION\_EUG\_20>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_EUG\_20>

**21. : Given the reduced content of the summary of the EU Growth prospectus do you agree with the proposal to limit its length to a maximum of six A4 pages? If not please specify and provide your suggestions.**

<ESMA\_QUESTION\_EUG\_21>  
We appreciate the intent of this proposal is to make summaries more relevant for investors and easier to understand by decreasing the length of these documents; however, we believe the provisions may be too prescriptive which could in fact lead to increased legal costs for issuers. <ESMA\_QUESTION\_EUG\_21>

**22. : Do you agree that the number of risk factors could be reduced to ten instead of 15? Do you think that in some cases it would be beneficial to allow the disclosure of 15 risk factors? If yes, please elaborate and provide examples. Please also provide a broad estimate of any benefits (e.g. in terms of reduced compliance costs) associated with the disclosure of a lower number of risk factors.**

<ESMA\_QUESTION\_EUG\_22>  
The limit on the number of material risks to a maximum of 10 (5 on the issuer and 5 on the securities) may simply be too restrictive for certain issuers. In our view, there should be no limit on the number of risks so that those that are material to an issuer and its securities can be identified in the summary.  
<ESMA\_QUESTION\_EUG\_22>



**23. : Do you agree that SMEs are less likely to have their securities underwritten? If not, should there be specific disclosure on underwriting in the summary as set out in Article 7(8)(c)(ii) of the Prospectus Regulation?**

<ESMA\_QUESTION\_EUG\_23>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_EUG\_23>

**24. : Do you agree with the content of the key financial information that is set out in the summary of the EU Growth prospectus? If not, please elaborate and provide examples.**

<ESMA\_QUESTION\_EUG\_24>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_EUG\_24>

**25. : Do you think condensed pro forma financial information should be disclosed in the summary of the EU Growth prospectus? Please state your views and explain. In addition, please provide an estimate of the additional costs associated with the disclosure of pro forma financial information in the summary compared to the additional benefit for investors from such disclosure.**

<ESMA\_QUESTION\_EUG\_25>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_EUG\_25>

**26. : Do you consider that there are any other additions or deletions that would improve the utility of the EU Growth registration document? If yes, please specify and provide examples.**

<ESMA\_QUESTION\_EUG\_26>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_EUG\_26>

**27. : Do you consider that the disclosure items in the specific summary of the EU Growth prospectus are clear enough to be understood by issuers? If not, please provide your views on whether any of the items would require additional guidance to issuers.**

<ESMA\_QUESTION\_EUG\_27>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_EUG\_27>

**28. : Please indicate if further reduction or simplification of the disclosure requirements of the summary of the EU Growth prospectus could significantly impact on the cost**



**of drawing up a prospectus. If applicable, please include examples and an estimate of the cost alleviation to issuers.**

<ESMA\_QUESTION\_EUG\_28>

In principle we would agree that a further reduction or simplification of the disclosure requirements of the summary of the EU Growth Prospectus could help in reducing costs.

In order to assess what the main costs of going public are, we would suggest that ESMA take into account the European Commission's Report on the CMU Mid-Term Review, in particular the section 'Drivers of going public – Equity' on page 42. As stated in the report, 'the costs of listing vary depending on the market choice and the size of the issue. The Federation of European Securities Exchanges estimates the cost of an IPO to be between 3 and 15% of the amount raised (FESE 2015).' 'Direct costs related to the IPO include underwriting fees, professional fees (legal advisers, audit and accounting fees, etc.), compliance costs and initial listing fees. In addition, IPOs tend to be offered at a discount which is an indirect cost to firms. After the IPO, the firm also has to deal with recurrent regulatory costs related to disclosure and corporate governance obligations and has to pay additional professional and annual listing fees.'

We would encourage ESMA to take this as a starting point when considering if and which costs should be alleviated. In addition, the proposal we make under Q17 to encourage issuers to disclose costs in a more granular fashion should provide useful data points in the future as to which part of the prospectus process could further be improved when it comes to costs. <ESMA\_QUESTION\_EUG\_28>